

**JOINT STATEMENT OF
COMMISSIONER MICHAEL J. COPPS AND
COMMISSIONER JONATHAN S. ADELSTEIN,
CONCURRING IN PART, DISSENTING IN PART**

Re: *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 02-112, CC Docket No. 00-175, WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order (Aug. 31, 2007).*

In this Order, the Commission allows the Bell Operating Companies (BOCs) to provide long-distance services on an integrated basis and subject to non-dominant carrier regulations, as long as they comply with targeted safeguards adopted in this Order and with their continuing statutory and regulatory obligations. We support this relief, with the conditions and commitments included herein, because the Commission must take into account the changing long-distance market.

We cannot fully join this decision because we are concerned that the Order does not fully take into account the significant consolidation that has taken place in the marketplace and what this means for consumers. Nor does the Order put in place a comprehensive mechanism for monitoring changes in the marketplace (e.g., in the long-distance, wireless, and access markets) that would enable the Commission to reliably make decisions. Consumers will not be well-served if the Commission allows the competitive options to dwindle to a choice of bundles from a duopoly of providers. With this concern in mind, we cannot support the decision to reach beyond the rulemaking proceeding to use forbearance to take away equal access scripting – a long-standing and useful tool for consumers seeking information about competitive options.

This Order finally addresses the important issue of what rules should govern the BOCs' provision of long-distance services after the sunset of Section 272 separate affiliate and related requirements. After much urging, we are pleased that the Commission here engages in a credible analysis of the need for alternative safeguards. Indeed, there are notable changes in the long distance market for which the Commission must account.

We also support the combination of conditions – some voluntarily offered, others not – that address concerns which the separate affiliate rules were designed, at least in part, to address – such as cost shifting, non-discrimination and the availability of competitive service for all consumers. Not all customers have benefited equally from changes in the marketplace because of a lack of effective choice of providers. We therefore appreciate the commitments made by AT&T and Verizon to offer calling plans targeted for residential consumers who make relatively few long-distance calls and to provide call detail information to enable consumers to make informed decisions about the most cost effective long-distance plans. We are grateful to Consumers Union and others who have drawn much-needed attention to these issues. The needs of low-volume consumers are too often overlooked, even though they have a real need for our vigilance.

As the Commission did in the *Qwest Section 272 Sunset Forbearance Order*, here we make a number of important findings regarding the potential for price and performance discrimination. Notably, the Order acknowledges that incumbent providers retain the ability to

raise their rivals' costs, and the Order maintains dominant carrier regulation for critical access services used by alternative long-distance providers. The Order correctly concludes that certain requirements of Section 272 will continue to apply, and it adopts rules for imputation and reporting that should help the Commission and competitors evaluate whether the petitioner is engaging in price discrimination. In addition, we are pleased that the Order makes permanent the BOCs' current commitments via merger orders and the *Qwest 272 Sunset Forbearance Order* to comply with special access performance metrics in order to ensure that they do not engage in non-price discrimination in the provision of special access services.

We have consistently stated our view that competition must mean more for consumers than a choice between two providers – a cable and a telephone company – and that such a result would represent an unfortunate back-sliding for consumers. So while we are pleased that the Order acknowledges the rapid changes to the long-distance market, we are also aware that some of these changes favor incumbent providers. It is imperative for the Commission rigorously to monitor the effect of these safeguards. We would have preferred that the Commission adopt a formal, comprehensive mechanism for verifying whether the predictions in this Order prove accurate.

In particular, the evidence in this record shows that the BOCs have enjoyed dramatic success in the long distance market in a relatively short period of time, particularly among consumers who choose bundles of local and long distance service. So, we are disappointed that the Commission reaches beyond the rulemaking proceeding to grant forbearance from the long-standing equal access scripting rules that require customers be informed of their right to select the long-distance provider of their choice. Given the BOCs' high share of the bundled marketplace, we dissent to this portion of the Order as the Commission should not be taking this valuable tool away from consumers.

For these reasons, we concur in part and dissent in part.